

Atty. Docket No.
006417.00002

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent Of: Michael A. Poteet

Examiner: Charles Goodman

U.S. Pat. App. No.: 10/788,877

Group Art Unit: 3724

Filed: February 27, 2004

For: Culinary Implement With
Interchangeable Elements

PETITION FOR PATENT TERM ADJUSTMENT

Commissioner for Patents
P.O. Box 1450,
Alexandria, Virginia 22313-1450

Sir:

Applicant respectfully asks that the Patent Term Adjust for the above-identified application be increased by 35 days (i.e., from 77 days to 112 days).

In reviewing the file history for this application, it was noted that Applicant filed a Response After Non-final Office Action on November 29, 2005. In reply, the U.S. Patent and Trademark Office issued a first Notice of Allowance on February 21, 2006. While this first Notice of Allowance normally would have constituted a timely communication from the U.S. Patent and Trademark Office under 37 C.F.R. §1.703(a)(1), the Notice of Allowance was subsequently withdrawn on February 21, 2006. Accordingly, an Office Action or another Notice of Allowance should have been issued by March 29, 2006, to comply with the time requirement set forth in 37 C.F.R. §1.703(a)(1). The U.S. Patent and Trademark Office did not issue a subsequent Office Action until May 1, 2006, however, a total of thirty-three (35) days after the March 29, 2006, deadline.

Applicant points out that the withdrawal of the first Notice of Allowance was not predicated upon any action by Applicants, or upon information that became available *ex post facto* with respect to the first Notice of Allowance. Instead, the Examiner indicated that the first Notice of Allowance was withdrawn in view of existing prior art. Specifically, the Examiner withdrew the first Notice of Allowance in view of U.S. Pat. No. 5,480,031 to Maultasch et al., U.S. Pat. No. 3,798,702 to Plauda, and U.S. Pat. No. 2,506,862 to Faehnel, each of which was issued some time prior to Applicant's filing of the instant application. (See Office Action dated May 3, 2006, page 2, lines 2-4.)

Accordingly, the Withdrawal of Notice of Allowance dated February 17, 2006, effectively vacated the Notice of Allowance *ab initio*. Applicant therefore urges that the period between March 29, 2006, and the issuance of the Non-Final Rejection on May 3, 2006, constituted an examination delay under 37 C.F.R. §1.103(a)(1). Applicant thus petitions the Commissioner for an appropriate correction of the Patent Term Adjustment in this application.

It is noted that this application is not subject to a terminal disclaimer. Further, there were no circumstances during the prosecution of this application that constituted a failure to engage in reasonable efforts to conclude processing or examination of this application as set forth in 37 C.F.R. §1.704. Accordingly, Applicant respectfully requests that the Patent Term Adjust for the above-identified application be increased by 35 days (i.e., from 77 days to 112 days).

In support of this Petition, Applicant respectfully authorizes the Commissioner to charge the associated Petition fee under 37 C.F.R. §1.18(e) of \$200 to the deposit account of the undersigned, Deposit Account No. 19-0733.

Favorable action with regard to this Petition is courteously requested at the Commissioner's earliest convenience. If any additional information is required for the Commissioner to act on this Petition, Applicant courteously asks that the Commissioner contact the undersigned by telephone or in writing.

Respectfully submitted,

By: s/Thomas L. Evans/s
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